

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Carter Garfield	Team: Squad #10	CCRB Case #: 202106373	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 11/20/2020 12:00 AM	Location of Incident: § 87(2)(b)	Precinct: 40	18 Mo. SOL 5/20/2022	EO SOL 5/20/2022	
Date/Time CV Reported Wed, 10/20/2021 6:59 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Wed, 10/20/2021 6:59 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. PO Jose Tejada	06150	960018	PSA 7
2. PO John Joyce	05953	961846	PSA 7
3. PO Michael Visintin	14001	953536	PSA 7
4. PO James Weck	10752	963803	PSA 7

Officer(s)	Allegation	Investigator Recommendation
A. PO James Weck	Abuse: Police Officer James Weck stopped § 87(2)(b)	§ 87(2)(b)
B. PO James Weck	Abuse: Police Officer James Weck searched the vehicle in which § 87(2)(b) was an occupant.	§ 87(2)(b)
C. PO James Weck	Abuse: Police Officer James Weck frisked § 87(2)(b)	§ 87(2)(b)
D. PO James Weck	Abuse: Police Officer James Weck searched § 87(2)(b)	§ 87(2)(b)
E. PO James Weck	Abuse: Police Officer James Weck interfered with § 87(2)(b)'s use of a recording device.	§ 87(2)(b)
F. PO James Weck	Abuse: Police Officer James Weck searched the vehicle in which § 87(2)(b) was an occupant.	§ 87(2)(b)
G. PO Jose Tejada	Abuse: Police Officer Jose Tejada searched the vehicle in which § 87(2)(b) was an occupant.	§ 87(2)(b)
H. PO Michael Visintin	Discourtesy: Police Officer Michael Visintin spoke discourteously to § 87(2)(b)	§ 87(2)(b)
I. PO James Weck	Discourtesy: Police Officer James Weck acted discourteously toward § 87(2)(b)	§ 87(2)(b)
J. PO James Weck	Abuse: Police Officer James Weck failed to provide § 87(2)(b) with a business card.	§ 87(2)(b)
K. PO Jose Tejada	Abuse: Police Officer Jose Tejada failed to provide § 87(2)(b) with a business card.	§ 87(2)(b)
§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)	§ 87(2)(b)
§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)	§ 87(2)(b)
§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)	§ 87(2)(b)

Officer(s)	Allegation	Investigator Recommendation
§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)	
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Case Summary

On October 21, 2021, § 87(2)(b) filed the following complaint on the CCRB website on behalf of himself. Because § 87(2)(b) filed this complaint eleven months after the incident, and an initial BWC request came back with negative results, this complaint was not closed within the statute of limitations of eighteen months.

On November 20, 2020, at approximately 12:00 a.m., § 87(2)(b) was seated in his vehicle in the vicinity of § 87(2)(b) in the Bronx. Four officers from the PSA-7 command approached his vehicle: PO James Weck, PO Jose Tejada, PO Michael Visintin, and PO John Joyce. PO Weck spoke with § 87(2)(b) first (**Allegation A: Abuse of Authority – Stop**, § 87(2)(g)). PO Weck reached into § 87(2)(b)'s vehicle through the window while speaking with § 87(2)(b) (**Allegation B: Abuse of Authority – Vehicle search**, § 87(2)(g)).

PO Weck had § 87(2)(b) exit the vehicle where he frisked and searched him (**Allegation C: Abuse of Authority - Frisk**, § 87(2)(g)). § 87(2)(g) (**Allegation D: Abuse of Authority – Search**, § 87(2)(g)). PO Weck then took § 87(2)(b)'s cellphone off the dashboard of the vehicle and turned off a video recording the incident (**Allegation E: Abuse of Authority – Interference with recording device**, § 87(2)(g)). PO Weck and PO Tejada then searched § 87(2)(b)'s vehicle (**Allegations F, G: Abuse of Authority – Vehicle search**, § 87(2)(g)).

While interacting with § 87(2)(b) PO Visintin said, “You think you're the man? You think you're the man? How about you talk to me like a man” as well as, “What is this imitation kid shit?” (**Allegation H: Discourtesy – Word**, § 87(2)(g)).

§ 87(2)(b) asked for a supervisor, and PO Weck allegedly told him no and slammed his car door shut (**Allegation I: Discourtesy – Action**, § 87(2)(g)). All four officers then left.

No summons was issued, and no arrest was made. PO Weck and PO Tejada did not provide § 87(2)(b) with a business card (**Allegations J, K: Abuse of Authority – Failure to provide RTKA card**, § 87(2)(g)).

§ 87(2)(g), § 87(4-b)

There is BWC footage from PO Weck, PO Tejada, PO Visintin, and PO Joyce, none of which are fully comprehensive (**BRs 07, 08**). § 87(2)(b) provided a cellphone video taken during this incident (**BRs 09, 10**). Relevant portions will be discussed below.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer James Weck stopped § 87(2)(b)

Since it was undisputed that § 87(2)(b) vehicle was in a legal parking spot, **Allegation A** is pleaded as a person (rather than a vehicle) stop.

It was undisputed that § 87(2)(b)'s windows were tinted on the day of the incident. Because PO Weck was the contact officer who spoke with § 87(2)(b) **Allegation A** is pleaded against him only.

§ 87(2)(b) provided an intake (**BR 01**) and phone (**BR 02**) statement to the CCRB. In his phone statement, § 87(2)(b) explained that he had a temporary license plate positioned in the bottom-left of his rear window and that his windows were slightly tinted.

Both PO Weck (**BR 03**) and PO Tejada (**BR 04**) stated that § 87(2)(b)'s windows were tinted, making it difficult to see the license plate.

PO Tejada's BWC (BRs 07, 08) confirms that, at the beginning of the video, § 87(2)(b)'s license plate is positioned inside of the rear window.

Vehicle and Traffic Law § 402 1.(a) (BR 26) states that license plates "shall not be covered by glass or any plastic material, and shall not be knowingly covered or coated with any artificial or synthetic material or substance that conceals or obscures."

It was undisputed that § 87(2)(b)'s vehicle had tinted windows and that his temporary plate was displayed behind the back windshield, which did not follow New York City's Vehicle and Traffic Laws. § 87(2)(g)

Allegation (B) Abuse of Authority: Police Officer James Weck searched the vehicle in which § 87(2)(b) was an occupant.

Allegation (C) Abuse of Authority: Police Officer James Weck frisked § 87(2)(b)

Allegation (D) Abuse of Authority: Police Officer James Weck searched § 87(2)(b)

It was undisputed that PO Weck reached into § 87(2)(b)'s car, frisked § 87(2)(b) and searched him. It was also undisputed that § 87(2)(b) had a knife on him at the time of the stop. What was disputed was the smell of marijuana emanating from § 87(2)(b)'s vehicle.

In PO Weck's BWC (BRs 07, 08), at the 00:15 second mark, PO Weck is seen reaching inside of § 87(2)(b)'s vehicle. § 87(2)(b) consistently stated that PO Weck tried to take his cellphone from him but gave conflicting statements regarding when exactly he began recording the incident. Since the investigation could not determine whether § 87(2)(b) was recording on his cellphone at the time that PO Weck is seen reaching into his vehicle, **Allegation B** is pleaded as a vehicle search and not as an interference with a recording device. (PO Weck's interference with § 87(2)(b)'s recording device is discussed in **Allegation E** below.)

§ 87(2)(b) (BRs 01, 02) said that PO Weck spoke with him briefly, then ordered him out of his vehicle. PO Weck then frisked § 87(2)(b)'s arms, legs, and pockets. He had his wallet in his left pocket, his car keys in his back pocket, and a pocketknife in his right pocket. PO Weck reached into § 87(2)(b)'s pockets and obtained all three items. In his phone statement, § 87(2)(b) added that he had not smoked marijuana, that there was no marijuana inside the vehicle, and that nobody had ever smoked any marijuana inside his vehicle.

PO Weck (BR 03) stated that he observed smoke emanating from § 87(2)(b)'s car when § 87(2)(b) rolled his window down. Smoke continued to emanate from the car until § 87(2)(b) opened his car door and stepped out of the vehicle. PO Weck also smelled marijuana coming from the vehicle. He said he is unable to distinguish the smell of burnt and unburnt marijuana, noting that it all smells the same to him. Other than the smoke emanating from the vehicle, there were no visible signs of any narcotics or narcotics use inside the vehicle. PO Weck said he received training in the Police Academy regarding identifying narcotics and had conducted hundreds of car stops involving marijuana.

§ 87(2)(b)'s behavior led PO Weck to believe that he might be carrying a weapon. He described § 87(2)(b) as combative, specifically speaking in a raised voice and arguing with him and other officers regarding the legality of his license plate. § 87(2)(b) also ignored commands to provide his ID, which PO Weck asked for a few times. He could not recall when § 87(2)(b) provided ID.

As soon as § 87(2)(b) exited the vehicle, PO Weck immediately frisked him. PO Weck felt a sharp, triangular object in one of § 87(2)(b)'s pockets that he thought was a knife. PO Weck searched the pocket and obtained a small knife about four inches long. He could not recall if he searched § 87(2)(b) anywhere else.

PO Tejada (BR 04) provided a statement relatively consistent with PO Weck's, with the following exceptions. PO Tejada described the smell of marijuana as burnt, as recently as within the hour. He did not recall observing any smoke emanating from the vehicle. PO Tejada did not recall

§ 87(2)(b) being frisked or searched.

PO Visintin (BR 05) could not recall seeing any smoke or smelling any marijuana. PO Visintin observed PO Weck frisk § 87(2)(b). He was unsure why PO Weck frisked § 87(2)(b). He could not recall if PO Weck searched § 87(2)(b) or obtained anything from § 87(2)(b). He remembered PO Weck said, “You have a weapon on you,” but he was unsure why.

PO Joyce (BR 06) could not recall seeing any smoke or smelling any marijuana. He could not recall if § 87(2)(b) was frisked or searched. PO Joyce said that PO Weck informed him that he smelled marijuana coming from the vehicle after they left the scene.

At no point in any officer’s BWC is marijuana mentioned (BRs 07, 08). In PO Weck’s BWC, the video begins with PO Weck shining his flashlight inside of § 87(2)(b)’s car. No smoke is visibly emanating from the vehicle.

Both PO Visintin and PO Joyce have memo book entries for the entire day (BRs 11, 12). Both have the same memo book entries (same time stamps and same information provided); however, the memo books differ syntactically. For example, for this incident, under comments, PO Joyce entered: “Car stopped for improper license plate placement. 10-91 warned and admonished” while PO Visintin entered: “Car stop for improper license plate placement. 91, W&A.” There are five total car stops recorded on this day, and in the comments of every one (besides this incident), both officers state that an odor of marijuana was emanating from the vehicle.

When asked why there was no mention of marijuana in their memo books regarding this incident, PO Visintin said it was possibly a clerical error, and PO Joyce stated that he might have forgotten to add it.

According to People v. Chestnut, 43 A.D.2d 260 (1974) (BR 15), the smell of marijuana smoke, with nothing more, can be sufficient to provide officers with probable cause to search an automobile and its occupants.

In People v. Norman 142 A.D.3d (BR 16), the court determined that People v. Chestnut’s ruling that the smell of marijuana constituted probable cause to search a vehicle and its occupants extended to parked vehicles.

§ 87(2)(g)

According to People v. Sanchez, 38 N.Y.2d 72, an officer can conduct a limited search of an area if they feel a hard object and can provide an articulable reason to believe that said object poses a dangerous threat (BR 30).

PO Weck clearly articulated feeling a sharp, triangular-shaped object that he believed to be a weapon in § 87(2)(b)’s pocket prior to searching him, which was then determined to be a pocketknife. § 87(2)(g)

Allegation (E) Abuse of Authority: Police Officer James Weck interfered with § 87(2)(b)’s use of a recording device.

§ 87(2)(b) (BRs 01, 02) consistently stated that PO Weck tried to take his cellphone from him but gave conflicting statements regarding when exactly he began recording the incident. § 87(2)(b) consistently stated that he placed his cellphone, which was recording, on the driver’s seat prior to exiting his vehicle. In his phone statement, he added that it was no longer recording after the entire incident ended.

In PO Weck’s BWC (BRs 07, 08), at the beginning of the video, § 87(2)(b) is seen holding his cellphone. At 1:58, after § 87(2)(b) is out of his vehicle, PO Weck reaches into § 87(2)(b)’s vehicle and grabs § 87(2)(b)’s cellphone which is resting on the dashboard. § 87(2)(b)’s phone screen is visibly on and appears to be recording. It is unclear what PO Weck does to the phone as it moves out of frame, but he holds it for twenty seconds until 2:18, where he then places

it back on the dashboard and grabs § 87(2)(b)'s second cellphone (which is also on the dashboard next to the first). PO Weck turns the phone screen on and off then places it back down a few seconds later.

In PO Tejada's BWC (BRs 07, 08), at 1:55, PO Weck is seen grabbing § 87(2)(b)'s cellphone from the dashboard, tapping the screen, and staring at the screen for about five seconds.

§ 87(2)(b)'s cellphone video (BRs 09, 10) is 00:03 seconds long and shows PO Weck picking up the phone, staring at the screen for approximately one second, and then the video ends.

PO Weck (BR 03) initially did not recall picking up § 87(2)(b)'s cellphone. His BWC from 1:58 to 2:03 was played during the interview. He then amended his statement and said he picked up § 87(2)(b)'s cellphone to ensure that there was nothing underneath the phone and to ensure that the phone was not a gun. It only took a couple seconds to do this before placing the phone back down. 2:03 to 2:18 was played during the interview. PO Weck might have held the phone for twenty seconds because he might have been distracted by the situation at hand with § 87(2)(b). § 87(2)(b)'s cellphone video was played. PO Weck identified himself as the officer seen on screen. He stated he might have accidentally turned off the video when he initially grabbed the phone from the dashboard.

PO Tejada's BWC showing PO Weck grabbing § 87(2)(b)'s cellphone and tapping the screen corresponds with the start and end of § 87(2)(b)'s cellphone video. PO Tejada's BWC also shows that PO Weck continued to look at the phone screen for approximately five more seconds and was not, as PO Weck stated he might have done, been distracted by § 87(2)(b).

Administrative Guide 304-21 (BR 17) states that officers shall not:

1. Intentionally prevent, or attempt to prevent, an individual from recording police activities; or
2. Threaten, intimidate, or otherwise discourage an observer from recording the police officer's activities; or
3. Delete or seize recorded images of police activity from an individual's recording device, unless authorized by law.

Furthermore, the Patrol Guide states that "this right to observe and/or record police action can be limited for reasons such as the safety of officers or other members of the public, or when a violation of law is committed by the individual(s) who are observing/recording."

§ 87(2)(b) was nowhere near his cellphone when PO Weck picked it up, and PO Weck did not describe any specific safety concerns for himself or for anyone else in the vicinity when he picked up § 87(2)(b)'s cellphone. PO Weck did not deny turning off the video, only stating that he did not recall doing so. BWC captured PO Weck staring at and tapping the phone screen, which was not necessary for him to do to check underneath the phone or to ensure that it was not a firearm, and also captures him tapping the area of the phone's power button, which corresponded with the end of § 87(2)(b)'s cell phone footage.

§ 87(2)(g)

Allegation (F) Abuse of Authority: Police Officer James Weck searched the vehicle in which § 87(2)(b) was an occupant.

Allegation (G) Abuse of Authority: Police Officer Jose Tejada searched the vehicle in which § 87(2)(b) was an occupant.

It was undisputed that PO Weck and PO Tejada searched § 87(2)(b)'s vehicle.

According to People v. Chestnut, 43 A.D.2d 260 (1974) (BR 15), the smell of marijuana smoke, with nothing more, can be sufficient to provide officers with probable cause to search an automobile and its occupants.

In People v Norman 142 A.D.3d (BR 16), the court determined that People v. Chestnut's

ruling that the smell of marijuana constituted probable cause to search a vehicle and its occupants extended to parked vehicles.

§ 87(2)(g)

Allegation (H) Discourtesy: Police Officer Michael Visintin spoke discourteously to § 87(2)(b)

In his intake statement (BR 01), § 87(2)(b) stated that PO Visintin said, “stop raising your voice and talk to me like a man. I’m not sacred of you. You’re not tough” whereas in his phone statement (BR 02), he said PO Visintin told him that he was “not a man.”

In PO Visintin’s BWC (BRs 07, 08), at 2:35, PO Visintin is arguing with § 87(2)(b) PO Visintin says, “You think you’re the man? You think you’re the man? How about you talk to me like a man.” At 3:35, PO Visintin says to § 87(2)(b) “What is this imitation kid shit? You think that’s funny.”

PO Visintin stated that he made these statements because § 87(2)(b) was not acting like an adult and was mocking him, so he responded out of raw emotion.

Patrol Guide Procedure 200-02 (BR 18) states that officers are to maintain a higher standard of integrity than is generally expected of others and to treat every citizen with compassion, courtesy, professionalism, and respect.

§ 87(2)(g)

Allegation (I) Discourtesy: Police Officer James Weck acted discourteously toward § 87(2)(b)

After the search, § 87(2)(b) (BRs 01, 02) stated that he returned to his vehicle and asked for a supervisor. PO Weck slammed his car door shut and said no.

PO Weck (BR 03) recalled having a conversation with § 87(2)(b) after the search was conducted. He said it was to inform § 87(2)(b) that he and his fellow officers were showing discretion. He recalled § 87(2)(b) asking for a supervisor. He did not recall slamming § 87(2)(b)s car door.

In PO Weck’s BWC (BRs 07, 08), at 4:53, PO Visintin looks over at PO Weck and says, “You want to use discretion? 91? 91?” PO Weck replies, “I don’t think he deserves it, but alright.” PO Visintin and PO Joyce walk away from § 87(2)(b) and back to their vehicle. PO Visintin says to PO Weck, “I’ll let you talk to him.” The video ends with § 87(2)(b) asking PO Weck, “Can I have a supervisor?”

§ 87(2)(g)

Allegation (J) Abuse of Authority: Police Officer James Weck failed to provide § 87(2)(b)
with a business card.

Allegation (K) Abuse of Authority: Police Officer Jose Tejada failed to provide § 87(2)(b)
with a business card.

It was undisputed that § 87(2)(b) was not arrested or issued a summons. In his phone statement (BR 02), § 87(2)(b) stated he did not receive a business card from any officer.

PO Weck and PO Tejada (BRs 03, 04) both stated they did not provide a business card because § 87(2)(b) did not request one.

Administrative Guide 304-11 states that officers must “Offer pre-printed RIGHT TO KNOW BUSINESS CARD upon conclusion of law enforcement activities, except in cases when a summons is issued or an arrest is made, or exigent circumstances are present,” including “Search of persons or property, including vehicles” (BR 19).

New York City Admin Code 14-174 “Identification of police officers” states “During a law enforcement activity, an officer shall: 1. Identify himself or herself to the person who is the subject of such law enforcement activity by providing his or her name, rank and command; 2. Provide to such person an explanation of the reason for such law enforcement activity, unless providing such information would impair a criminal investigation; 3. Offer a business card to such person at the conclusion of any such activity that does not result in an arrest or summons.” It includes “Searches of persons or property, including vehicles” under the definition of “law enforcement activity” (BR 20).

PO Weck and PO Tejada, who both searched § 87(2)(b)'s vehicle, did not follow the patrol guide when they failed to provide § 87(2)(b) who was neither arrested nor issued a summons, with a business card. § 87(2)(g)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

- § 87(2)(b)
 - [REDACTED]
- PO Weck has been a member of service for five years and has been listed as a subject in seven CCRB complaints and 18 allegations, seven of which have been substantiated.
 - § 87(2)(g) [REDACTED]
 - § 87(2)(g) [REDACTED]
- PO Tejada has been a member of service for six years and has been listed as a subject in four CCRB cases and 11 allegations, five of which were substantiated.
 - 201707277 involved two frisk allegations and one search allegation, all of which were substantiated. PO Tejada received Command Discipline A for all three.
 - § 87(2)(g), § 87(4-b) [REDACTED]
 - § 87(2)(g) [REDACTED]
 - § 87(2)(g) [REDACTED]

- PO Visintin has been a member of service for nine years and has been a subject of 6 CCRB complaints and 19 allegations, three of which were substantiated.

- § 87(2)(g), § 87(4-b) [Redacted]
- § 87(2)(g) [Redacted]
- [Redacted]

- PO Joyce has been a member of service for five years and has been a subject of five CCRB cases and 11 allegations, one of which was substantiated.

- § 87(2)(g), § 87(4-b) [Redacted]
- § 87(2)(g) [Redacted]
- [Redacted]

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- On April 12, 2022, a FOIL request for any Notice of Claim filed with the Office of the Comptroller came back with negative results (**BR 28**).

- § 87(2)(b) [Redacted]

Squad: 10

Investigator: Carter Garfield Inv. Garfield 7/28/2022
Signature Print Title & Name Date

Squad Leader: Maura R. Roche IM Maura R. Roche 08/04/2022
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date